

CONSIDERATIONS

ON THE

NEGROE CAUSE

COMMONLY SO CALLED.

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CONSIDERATIONS

Negro Cause ON THE

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NEGROE CAUSE

COMMONLY SO CALLED,

ADDRESSED TO

THE RIGHT HONOURABLE

L O R D M A N S F I E L D,

L O R D C HIEF J U S T I C E of the C O U R T of

K I N G ' S B E N C H, &c.

By A W E S T I N D I A N.

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CONSIDERATIONS ON THE NEGROE CAUSE, &c.

My Lord,

BEING what I shall subscribe myself
in this address to your Lordship, I
was led, somewhat interestedly as you may
suppose, to attend to the arguments that
were lately offered in the Court of King's
Bench, in the Case of Somerset the negroe
versus Knowles and others. It was a new
case, said to be full of concern to America ;
and it had engrossed much of general ex-
pectation. My object therefore was that
of information ; but, without meaning to
lessen the labours, or to depreciate the

merits of the learned counsel concerned therein, I must confess, that the lights thrown on the case did by no means appear to me as, on either side, decisive of the point in question. It is true that a vast and extensive variety of reading was shewn and discovered: the profoundest depths of learning and science were fathomed and explored: lawgivers, philosophers, civilians, from all historic existence, were brought to light and examined: the examples, definitions, and opinions, which Moses, Aristotle, Justinian, Grotius, Pufendorff, and the rest, had given of slavery, were cited, explained, and enlarged upon: the edicts and regulations of French, Spanish, German, Flemish, and Dutch police on this head were mentioned and produced. But, my Lord, with all due deference and submission, may I ask, how applicable was this antiquated and foreign doctrine to the case then under your Lordship's contemplation? The politics of Aristotle are not the rules of the Court of King's Bench; neither

neither is Roman jurisprudence the law of that court. As a display of general knowledge, it had with me, as it must have had with every one present, its great abundance of merit and commendation; and I had followed the learned gentlemen, with the highest pleasure, in their travels and pursuits through other countries abroad in search of matter of illustration, if the case had been brought home with them at last, and rested on its own native ground and foundation. But herein, my Lord, I found myself unsatisfied and disappointed: for how the question remained with your Lordship as a point of law for the judgement of the court, I own I was unable to comprehend, or to learn. It is therefore, my Lord, that I now take the liberty to offer the following Considerations to your Lordship's notice and observance; trusting to the importance of the subject, and to your wanted candour, for my apology and pardon in the attempt.

I have read, my Lord, to distinguish, and have been ever taught to know, that the Lord Chief Justice of the Court of King's Bench is the great and first expounder of the laws of this Realm; great and first in dignity and in office; in your Lordship's person, great and first, professedly in capacity also. Of these laws then, my Lord, I have apprehended that there are but two kinds, however sub-divided into sorts or species: the unwritten, or common law, of which judicial decisions are the evidence; or the written, or statute law, otherwise called acts of parliament. Now, my Lord, so far as the case is referable to either of these establishments, so far it lies before the Court, and falls under the cognizance of your Lordship. This then is the source of enquiry leading to your judgement and determination; and all without the circle of this, I conceive to be inappropriate and eccentric. The first question then, that would seem to arise on this position, is, What is the common law of the land

land respecting the case in issue, considered as a case of slavery ? It was said, I remember, by one of the counsel, that the present state of slavery among Negroes was totally different from the ancient condition of villenage ; that it was a new species of slavery utterly unknown to the common law of England. In this opinion I readily coincide, and agree with the learned gentleman. The next question is, What do acts of parliament say on this head ? I believe it must be said for them, that they are, enactively, if I may be allowed the expression, silent. If this be so, then the conclusion will operate in the nature of a plea to the jurisdiction of your Lordship's court. If the case be unknown to the common law, and acts of parliament are silent thereupon, what basis must your Lordship's judgement take ? Where there is no law, there can be no remedy. If the common law be defective, it is the business of acts of parliament to supply the defects :

but

but until those defects are supplied, *sub judice lis est*, and the matter must remain undetermined. Your Lordship may however tell me, that, where positive law is wanting, whereupon to ground the decisions of a court, recourse may be had to the maxims and principles of law, to the spirit of the constitution. The result of this, my Lord, at best is but matter of opinion: besides, cases founded on the self-same principles will often have very different determinations, according to the difference of circumstances, and the alteration or change of times. Thus, if it had even been an original maxim of the common law, that slavery was incompatible with the frame and constitution of this country, yet it does not therefore follow, that occasions have not since arisen to combat with this principle, and to justify particular conclusions differing from these general premises. The impressing of seamen, my Lord, is an idea as heterogeneous to the nature and essence of this government, as

slavery

slavery painted on the blackest ground can be. It is slavery itself, in it's very definition; and what signifies the name, says Hudibras, since the thing is the same? But the indispensableness of the measure has nevertheless (to continue the metaphor) given colour to the practice, and it is now seen in another light and view. But to return: If your Lordship should be of opinion, for opinion it must be, if there is no positive law to ground your judgement upon, that Negroes in this country are free, I will place in opposition to this, the opinions of the late Lord Chancellor Hardwicke, and his predecessor the Lord Chancellor Talbot, to wit, that Negroes in this country are not free. Your Lordship perceives, that I take your opinion upon supposition only; the other opinions are well known facts. To search then for the grounds of your opinion, without the certainty of its being so, would be now premature and unnecessary: but, knowing the opinions of these two great oracles of law, it is of necessity,

to

to conclude, that they had the most sufficient foundation for them, seeing that it is allowed on every hand, that no opinion was ever given in any case whatever with greater solemnity, or more deliberation, than these were. Now, my Lord, to investigate the reasons of these opinions, is one way, perhaps, to arrive at the truth: but to follow men like these, in their researches, is a procedure fitted only to abilities such as your Lordship's are. However, conjecture is open to all, though positive knowledge is but the gift of a few. Upon this consideration then, I shall venture to suggest what might in part have led the ideas of these great and wise men to the conclusion which they have drawn, namely, that Negroes in this country do not become free. I have before stated, my Lord, and have agreed with one of the learned counsel, that the condition of slavery among Negroes is unknown to the common

common law of this land: that it is a new species of slavery, which has arisen within, and not beyond, the memory of man, as is necessary to the descriptive quality of this kind of law; and, therefore, being not under the comprehension, it cannot be within the absolute provision of it, however reduceable thereto it may be made by analogy, implication, or construction. I have said too, that acts of parliament are silent on this head. I have repeated what I had before stated and said, in order to draw this inference: that although the slavery of Negroes is unknown to the common law of this country, and acts of parliament are silent thereupon; yet the right which Mr. Stewart claims in the Negroe, Somerset, is a right given him by act of parliament.

I must now then apprise your Lordship, that from this instant it is my intention to

drop the term: slavery. It is an odious word, that engendered this law-suit, and now feeds and supports it with the fuel of heated passions and imaginations. Instead then of such prejudiced and unpopular ground, whereupon the case has hitherto been made to stand, I shall take the liberty to remove it's situation, to change it's point of view, and to rest it on the land of *Property*; from whence, perhaps, it will be seen, not only in a less offensive light, but where also it may find a foundation more solid and substantial for it's support.

It is a matter of course, my Lord, to say, that you are well acquainted with all the acts of parliament relative to the Royal African Company of Merchants, from their establishment by charter in the reign of Charles the Second down to the present time. Now, my Lord, the end of this company

company was trade: the object of that trade Negroes, as the preamble to the act of the 23d of Geo. II. c. 31. thus expressly declares: “Whereas the trade to “and from Africa is very advantageous to “Great-Britain, and necessary for supply-“ing the plantations and colonies there-“unto belonging with a sufficient number “of Negroes, at reasonable rates, it is “therefore enacted, &c. &c.” Whatever then, my Lord, is matter of trade, your Lordship knows must be matter of property. The idea of the one is necessarily involved in the other. But, my Lord, these acts have not been content with this general construction: they have gone farther, and have themselves set the mark and stamp of property upon Negroes. Whether, my Lord, the legislature is justifiable herein, or whether it has authority by the laws of nature to do this, is not for me to determine. It is, perhaps, a right,

like many other civil rights, established by power, and maintained by force: but this is matter of speculation for the speculative. I contend only, that the fact is as I have stated it to be; and as it will appear by the statute of the 25th of Geo. II. c. 40. which was made for application of a sum of money therein mentioned, granted to his Majesty, for a compensation to the African company for their charter, lands, forts, castles, slaves, military stores, and other effects; and to *vest* the lands, forts, castles, *slaves*, military stores, and *other effects*, in the company of merchants trading to Africa.

Here, my Lord, the legal nature of Negroes, if I may so speak, is fully established, and clearly ascertained by act of parliament. Your Lordship perceives, that they are vested as goods and chattels, and as other effects are, in owners prescrib-
ed

ed for them. It is observable too, that the very term slave is made use of, and recognized by this act of parliament: but inasmuch as this is irrelative to the present question, so also may it be said, not pointedly to fix the idea of slavery, but descriptively only of such things as shall be deemed the property and effects of this company. The statute, my Lord, of the 5th of His present Majesty, ch. xliv. enacts, that such parts of Africa as were ceded by the last treaty of Paris, with the goods, slaves, and other effects thereunto belonging, and which were, by a former act, vested in the African company of merchants, shall now become the property of the crown; so that the King, as well as this corporation of merchants, are, by the law of the land, possessed, and are now the actual and rightful owners, of a very considerable number of Negroes, under the description of canoe-men, castle-slaves, women, children, carpenters,

penters, and other artificers, particularly set forth in schedules annexed to the aforesaid acts. It is also enacted, that the trade to Africa shall be free and open to all His Majesty's subjects, without preference or distinction; and it is further provided, that these acts shall be deemed and received as public acts, to be judicially taken notice of by all judges and others to whom it may concern, without specially pleading the same.

Upon this state and exposition then, my Lord, of these several statutes, it would seem that I am fully warranted, by their authority, in my idea, that the right which Mr. Stewart claims in the Negroe Somerset, is a right given him by act of parliament; and confirmed in my proposition, that this is a case of property.

But,

But, my Lord, in order fully to establish this doctrine, it may perhaps be expected, that I should not only shew what the law is, but that I should prove also what the law is not; and this must necessarily lead me to reason somewhat more closely on the subject.

I am aware it may be objected, my Lord, that property in Negroes so vested, is a property created in Africa for the use and purpose of the colonies in America: from whence a question will be deduced, Whether Negroes are property in England?

It appears, my Lord, that a trade is opened with the sanction, and under the protection of parliament, between the subjects of Great Britain and the natives or inhabitants of Africa. The medium of this trade on the one hand are, manufactures,

tures, goods, wares, and other merchandize; on the other, captive Negroes, or slaves; which, for these commodities, are given in barter and exchange. It will be allowed, I presume, my Lord, that these British traders, or merchants, have an absolute property in their merchandize; to truck and to traffic with this merchandize is the legal institution of the trade: it will be absurd then to deny, that they have not an equal interest in the thing received, as they had in the thing given. To avoid this dilemma then, the objection recurs; that, in Africa they may have an interest, in America they may have the same, in Europe they have none: but assertion without proof, is argument without weight. Where is the law that has drawn this line of distinction? Is there any act of parliament, or clause of an act of parliament, that has fixed and described the zones or climates wherein property in Negroes may be had, or where

where it may not be had? Until I am better informed, my Lord, I must take for granted, that no such law exists; and if no such law does exist, the manifest conclusion is, that where property is once legally vested, it must legally remain; until altered or extinguished by some power co-equal to that which gave it.

But as it may perhaps be to the purpose, my Lord, to try the force and effect of these acts of trade referred to, I will, with your Lordship's indulgence, state a case or two, whereby their operation in this country will be felt and perceived.

Suppose, my Lord, that a fleet of merchant ships belonging to the African company, containing twenty thousand Negroes on board (more or less it is of no matter), bound from Africa to America, should, by strange, contrary, and adverse winds, be

D driven

driven and wrecked upon the coast of England; that the ships were lost and destroyed, but that the Negroes had been landed in safety on this shore of freedom; would the African company, my Lord, be justified and entitled to re-ship these Negroes in other vessels, to the end that they might be conveyed to their destined ports in America? Or, would the pure air of this country, as has been insisted on, set them, with caps of liberty on their heads, free and at large; thereby robbing, for so I must call it, these merchants of their property, to the amount of one million of money, at the allowance, and on the moderate computation, of fifty pounds price for each individual Negroe? In this kingdom of commerce, my Lord, where the rights of merchants are so well distinguished, and the laws of trade are so minutely known, I should presume that the case would not admit of a question. Of what

use

use would the charter of this company be to them, if the laws protective of that charter should be found inadequate and ineffectual to the maintenance and security of their property? But again: it has been observed, my Lord, that by the statute of the 5th of George III. ch. xiv. a number of canoemen, and other Negroes, in Africa, were vested in the crown. Now, by canoemen, I suppose, my Lord, are meant, African sailors: suppose then, that one hundred for example, of these sailors, should by some contrivance or other find their way into England; would the King, my Lord, have authority to remand them to their place of duty? or, would writs of Habeas Corpus, in despite of this act of parliament, protect them here; and thereby determine the right of the Crown in them? The case, my Lord, speaks and determines for itself. Wherein then, my Lord, differs the case of Mr. Stewart from

thief? Their importance is greater, but the principle throughout is the same. I believe it is not denied that Mr. Stewart was the *bona fide* purchaser of Somerset, in the legal course of trade. I don't apprehend that any evidence was offered to shew that he had stolen him, or that he came by him otherwise surreptitiously. If my memory does not fail me, the property was proved, by affidavit, before your Lordship; or it was stated in the return made on the Writ of Habeas Corpus: but in either way it is of no concern, since the title deeds are not now before the Court as the objects of dispute.

Here then, my Lord, without farther disquisition, I might venture to rest the defence of Mr. Stewart, and therein the law of the case itself. The reasoning, perhaps, may be said to be new, and it is opinion only of my own that supports the doctrine; but, I trust, that, upon examination,

nation, it will be found to be not therefore the less conclusive. However, as I am upon the subject, it may not be amiss that I should pursue it somewhat farther; and, by extending the chain of enquiry, strengthen and enforce the arguments that have been already offered and applied. It was said, by one of the plaintiff's counsel, that municipal laws were binding only in the state wherein they were made; that, as soon as a member of that state was out of it, they ceased to have their influence on him; and the laws of nature of course succeeded to him. As a general proposition, my Lord, this might have had its admission, but even as such, it is not without its exception. I think I have the most classical authority of the law to say otherwise. For instance, allegiance, which is the duty that every subject owes to the sovereign, or sovereignty, of that particular state to which he belongs, is a municipal

nicipal law; and yet, neither time, place, nor circumstance, can alter, forfeit, or cancel the obligation. An Englishman (says Judge Blackstone*) who removes to France, or to China, owes the same allegiance to the King of England thereto as at home, and twenty years hence as well as now. But, my Lord, with regard to the particular application of this proposition, when the gentleman endeavoured to make a distinction between the laws of the colonies and the laws of England, in my apprehension he was extremely mistaken. I fancy the relationship and dependency of the children colonies on their mother country did not occur to his mind. The circumstance of their having internal laws of their own, by no means argues a difference in those laws, independent of the laws of England. As well might it be said, that

* Vide, Blackstone's *Commentaries*, vol. i. p. 369.

the
English

the laws of England are not the laws of the county of Kent, because by the custom of gavelkind they differ from the general laws in the disposition of estates; and so of Borough-English, and wherever in this kingdom particular customs are to be found or met with. But, my Lord, it is not only a first and leading principle of legislation in the colonies, arising out of the royal instructions given to commanders in chief there, but it is enacted by the statute of the 7th and 8th of William III. ch. 22. that no law, usage, or custom, shall be made or received in the plantations, repugnant to the laws of England: so that, by these restrictions, the *very leges loci* (wherein, from situation, from climate, and from other circumstances, one might naturally suppose some difference) are forced as much as may be to a conformity with the constitution and laws of this country. If property, therefore, in Negroes, was repugnant

nant to the law of England, it could not be the law of America; because, by the same statute, wherever this repugnancy is, there the law is *ipso facto* null and void. From what I have here suggested, my Lord, I mean to conclude generally, that the right and property, not only of Mr. Stewart in his Negroe Somerset, but of every subject of Great Britain in his Negroe or Negroes, either in the colonies or elsewhere, is a right and property founded in him by the law of this land; that the laws of the African company are the foundation whereupon all the laws of the colonies, respecting their Negroes, are built and established; and that, without this sanction of parliament, those laws could never have been made. For, my Lord, it is evident that the colonies could not have had power of themselves to institute this trade to Africa; neither have they the means to support it. Without this trade

then

then to Africa, no Negroes could have been imported to them; and if they had no Negroes among them, they needed no laws appertaining to Negroes.

But, my Lord, it may be urged, that although the laws of England may make property of Negroes, they do not make slaves of them. I should imagine that, although an individual, I might answer individually for every American subject of the king, that they do not desire any greater interest in their Negroes than that of property. It is self-sufficient to answer all their purposes, and to produce all that great good which this nation experiences, therefrom. It is a supposition of inhumanity, I hope, inapplicable to these people, that they should wish to make slaves of their Negroes, merely for the sake of slavery; and if it should appear, that there is no such law existing in America, as the

law of slavery, considered as such, I should infer that the contrary presumption was fittest to be entertained and received. The law respecting Negroes there, my Lord, is the law of property, consentaneous to the law of England. By this law they are made real estate, for the purpose of descent, and goods and chattels *quoad* the payment of debts. This is the original and fundamental law concerning Negroes. I do not remember ever to have seen the word slavery made use of, in any law, of any colony, in America. I admit that the Negroes are there termed slaves: but I will tell your Lordship why. In the criminal law, where they become necessarily the objects of punishment, it is essential that they should have some descriptive name or title given to them. It is for this reason, therefore, that they are there, and there only, so called. As they had been already defined to be property, as Negroes,

it could not be said that if property should strike his master, property shall be punished; but it is said, that if a slave should strike his master, this slave shall be punished accordingly. Now in the antient law of England, my Lord, when slavery was part of the constitution, your Lordship knows, that not only the villain was described, but the law of villenage or bondage was also known and laid down. In the laws of America, the slave is made mention of, for the reason assigned; but the law of slavery, however impliedly, is no where expressly to be found.

But here, my Lord, I must beg leave to make a short digression, intentionally to wipe off an imputation, which by one of the plaintiff's counsel was thrown on the owners and possessors of Negroes in America. In the course of his pleading, he took occasion to draw a hor-

rid and a frightful picture of the barbarity, and cruelties, that were exercised on these beings in the colonies; and concluded with hoping, that such practices would for ever remain forbidden to this country. Your Lordship knows, that wherever order is, there discipline must ensue. Like as cause and effect, they are inseparable one from the other. Now it is not to be presumed, that an hundred thousand Negroes are to be held in obedience, to ten or fifteen thousand owners (for this perhaps may be found to be near the average) without some means or methods which, from their accidental application, might so generally operate on their fears, as to produce the end required. It is so in the case of the navy; it is so in the army of every country in the known world. A soldier would not put himself in the front of a battle, to run the risque of being shot through the head, if he did not know that this would be

be the certain consequence of his deser-
tion. The fear of the latter gives him
courage to engage in the former : or, how
otherwise could fifty officers, perhaps,
command a regiment of a thousand
men? But, my Lord, the design of
this gentleman's groupe of figures,
was to induce a belief in the Court,
that English feelings were to revolt
at American punishments. As martial
law is not the law of Westminster-Hall, it
is likely that he has not studied it : but
living in this country, I cannot suppose
him a stranger to the effects of it. Who
have not been eye-witnesses to the hun-
dreds of stripes that have been given to
soldiers on the parade of St. James's? I
saw once, my Lord, two sailors, who were
perhaps impressed men too, under the
sentence of receiving five hundred lashes
each, flogged on their naked backs along
the sides of thirty-four men of war, lying
at

at anchor in the harbour of Spithead. Was such a punishment ever known to have been inflicted on any Negroe in the American plantations? No, my Lord: the laws of every colony forbid it: but a stronger law than these prevents it, the law of self-interest. Negroes are the fortunes of those who possess them. Land, without their aid and assistance, in order to cultivation, is useless, and of no value. If their healths are impaired, their labour is lost, and profit ceases. If their lives are destroyed, their places must be supplied with more difficulty, and at a much greater expence, than is commonly supposed. The good consequence of which, my Lord, is, that the state of Negroes, *cæteris paribus*, in America, is preferable, nay infinitely more desireable, than the condition of the poorer sort of people residing even in this boasted happy isle. I will not say, my Lord, that this is a rule without

without an exception. There are madmen in all parts of the world, who, as such, act diametrically opposite to their interest. Such there are in America: but your Lordship sees, that the observation is founded on reason, and I can assure your Lordship, that it is the effect of general experience. But, my Lord, I cannot quit this subject without making all due allowance for the learned counsel's zeal for his client, and the warmth of his youth, which probably might have hurried him into this ill-grounded, and uncalled-for reproach. It was ill-grounded, as, I hope, I have proved: it was uncalled-for, because not necessary to the question; and could no otherwise be applied or received, than as mere *argumenta ad passiones*; which, however admissible to the ears of a jury, to the distinguishing eye of a court, never fail to carry with them their own impropriety. But in justice to the gentleman, in other respects,

species, I am called upon to say, that it was with infinite pleasure I perceived those rays of genius and abilities in him, which promise to shine forth so conspicuously, to the ornament of this country, and to the honour of Barbadoes, his native island, in America.

I come now, my Lord, to say, that I hope it will not be imputed to me as vanity, that I have ventured to suggest what might in part have led the ideas of those great and wise men, the Lord Chancellors Talbot and Hardwicke, to the conclusion which they have drawn, namely, that Negroes in this country do not become free. I was encouraged in the undertaking, by the greatness of their authority. I was enlightened in the pursuit, by the evidence of their opinion. I thought myself justified in resting their chief reasons and motives on the principles of property; and

I will produce the opinion itself, as the warrant of my justification :

“ We are of opinion, that a slave by
 “ coming from the West-Indies, either
 “ with or without his master, to Great-
 “ Britain or Ireland, doth not become
 “ free, and that his master’s *property* or
 “ *right* in him is not thereby determined
 “ or varied ; and baptism doth not bestow
 “ freedom on him, nor make any altera-
 “ tion in his temporal condition in these
 “ kingdoms : We are also of opinion, that
 “ the master may *legally* compel him to
 “ return to the plantations.

“ P. YORK.

Jan. 24, 1729.

“ C. TALBOT.”

Upon this opinion, my Lord, I shall
 make no other remark, than that right and
 property seem to be the obvious ground and

foundation of it, and the hinges whereupon the whole is made to hang and turn.

But, my Lord, I will now admit, that what is held to be law, is at variance with this opinion. It is laid down "that a Slave or Negroe, the instant he lands in England, becomes a freeman;" that is, "the law will protect him in the enjoyment of his person and his property; " yet with regard to any right which the master may have acquired to the perpetual service of John or Thomas, this will remain exactly in the same state as before." The interpreters of this law, my Lord, may be right in point of reason, but, I submit it, that they are wrong in point of law. The case is this, my Lord: seeing that Negroes are human creatures, it would follow that they should be allowed the privileges of their nature; which, in this country particularly, are in part

part the enjoyment of person and property. Now, my Lord, from hence a relation is inferred, that has not the least colour of existence in law. A Negroe is looked upon to be the servant of his master ; but by what authority is the relation of servant and master created ? Not by the authority of the law, however it may be by the evidence of reason. By the law, the relation is, as *Negroe* and *Owner* : he is made matter of trade ; he is said to be property ; he is goods, chattels, and effects, vestable and vested in his owner. This is the law, my Lord ; which however I would not be understood to justify farther than by supposing, that in an affair of such national consequence and concern the wisdom of parliament saw reasons of necessity for it, which are not obvious to my limited understanding.

The learned Judge Blackstone too, my Lord, has given into this opinion of the law, though, to avoid his being responsible for the doctrine, he has drawn a screen between himself and the law. In the chapter, of Title to things personal by occupancy, he says, "As in the goods of "the enemy, so also in his person, a man "may acquire a sort of qualified property, "by taking him a prisoner in war, at "least till his ransom be paid. And this "doctrine seems to have been extended to "Negroe servants, who are purchased when "captives, of the nations with whom they "are at war, and continue therefore in some "degree the *property of their masters* (he "should have rather said *owners*) who buy "them; though, *accurately speaking*, that "property consists rather in the perpetual "service, than in the body or person of the "captives." *Accurately speaking*, my Lord, I join

I join issue with the learned judge: but, legally speaking, the law is as he had stated it to be. Those who speak accurately reason from the real nature of Negroes, and draw their conclusions from thence: the Lords Talbot and Hardwicke spoke legally, and drew their opinions from the fountain head of law. Besides, my Lord, I conceive it to be impossible that the law should be as these interpreters or reporters have made it to be; because the result of it is plain inconsistency, and positive absurdity. If Somerset is protected by the law of England in the enjoyment of his person and property, how, in appeal to common sense, can Mr. Stewart's right in him remain exactly in the same state as before? Yes, it may be said, he has a right to the perpetual service of him, for this is no more than the same state of subjection for life, which every apprentice submits to for the space of seven years, or, sometimes

sometimes for a longer time. But by what mode or method does Mr. Stewart acquire this perpetual right to his service ? There is no indenture of apprenticeship on the part of Somerset to him : there is no written contract of any sort or kind whatever, there is no parole agreement between them, to enforce this right of service. How is it to be maintained then ? If by the purchase of him, property is the offspring of purchase ; and, as such, Mr. Stewart claims him. If he is not his property, he has otherwise no right in him, nor to his services ; and, again, if he is his property, who shall disseise him thereof ?

If now, my Lord, I have supported the doctrine which I took upon me to evince, and have satisfactorily shewn that property is the gift of action in this case, I shall leave its decision to your Lordship, on a

quotation

quotation of your own words: "That it
"was not your business to alter the law,
"or to make it, but to find the law."

It remains then only to observe, my Lord, that if Somerset is the legal property of Stewart, he, Somerset, cannot legally be entitled to the writ which he has sued out in aid of relief. The writ of Habeas Corpus is a writ of right given to the subjects of the crown of England, for the security of their liberties. If Somerset can fall under this predicament and description, he is open to the benefits that may arise therefrom: but if the law has already fixed the *fact* of property on him, I apprehend it is a legal exception to the writ, and his right is foreclosed thereby.

Having said thus much, my Lord, on one side of the question, I do not mean to

conceal my sentiments on the other. My aim is to establish the truth; my wish, that what is right should be done. Whatever then is here the result of my reflections, to obtain the end I propose, is necessary to your Lordship's information.

When this matter, therefore, was first in agitation, it stated itself thus generally to my comprehension: that as it was a case which existing, and never receiving any judicial determination, for an hundred years and upwards, it had better remain in the situation it was. It compared itself to me with some cases of royal prerogative, and of parliamentary privilege, which were excellent in theory, but subject to inconvenience in practice; and whose best and safest law was that of suspense: but, my Lord, when I found that the case was to be argued, and the judgement of the Court of King's Bench taken thereupon,

upon, my hopes were, that, if it was possible to counteract the law of the land, the decision would be in favour of the Negroe: for although the knowledge of their being free might spirit them up to insurrections in America, yet it would put a stop to their importation here by their owners, and they would be more usefully kept and employed in the colonies to which they belonged. On the contrary determination too, my Lord, it being solemnly adjudged that Negroes in this country were not free, I foresaw that this fatal consequence might follow: that the trade from Africa to America would be diverted from Africa to England; and Negroes, in process of time, would be sold in Smithfield market, as horses and cattle now are. Each farmer would have his Negroe to drive his plough, each manufacturer his slave under his own controul; and America that was conquered in Germany, as

was the saying of a very great man, would be America ruined in England,

A great deal, my Lord, was urged by the learned counsel, of the edicts of France, relative to Negroes: but it does not occur to my memory that this, among the rest, was taken notice of. It may be, that I am misinformed with respect to the fact; but I will tell your Lordship how I came by it. I have been myself, my Lord, a traveller through every province of France, and during my tour I never had opportunity of seeing more than two Noirs (or Blacks) as they are there called; one of which was at Marseilles, the other at Bourdeaux, the two chief ports of trade with the American colonies of that kingdom. Knowing therefore the intercourse with, and observing the fewness of these people, I was led to enquire into the reason of it; when I was informed, that there was an

absolute edict of the present king of France, prohibiting the importation of them into that country, upon this political idea, that otherwise the race of Frenchmen would, in time to come, be changed. Greater much, my Lord, is the reason in this country to apprehend this event. It was in representation, if not in proof, to your Lordship, that there were already fifteen thousand Negroes in England; and scarce is there a street in London that does not give many examples of that, which, with much less reason, had alarmed the fears of France. Upon the whole, then, my Lord, let America and England look up to your Lordship, as the man qualified to draw the line of propriety between them. To this end, let a Bill originate in the House of Lords, under your Lordship's formation: let slavery, so far as property is such in Negroes, be held in America; let the im-

portation of them be prohibited to this country. Some centuries back slavery was the law, and slaves the objects of that law, as I observed before, in this kingdom: but civilization has extinguished the existence of both. When America shall be what England is, some yet undiscovered land will become what America is. In short, my Lord, by this act you will preserve the race of Britons from stain and contamination; and you will rightly confine a property to those countries, upon whose prosperity and welfare the independent being of this country rests.

I am,

My LORD,

With every mark of respect for your Lordship,

A WEST INDIAN.

THE SUBSCRIPTIONS WHICH I HAVE RECEIVED
IN CONSEQUENCE OF THE PUBLICATION
OF THE PROPOSED BILL, AMONGST YOURS, ARE
AS FOLLOWS:—

P R O P O S T S C R I P T.

RECEIVED TUESDAY, APRIL 16. I enclose you
a copy of the bill, and a memorandum

T H E above considerations, were intended for your Lordship's eye, so as you may perceive, previous to the giving judgement on the case which makes the subject matter of them. To this end, they were put into the hands of the printer, some time before the commencement of the present term; but a report prevailing, that judgement would be deferred to the latter end of the term, their publication was not forwarded with that dispatch as a contrary expectation would have occasioned. As it is, they have lost their object, and I, in some measure, am foiled in my purpose. However, your Lordship having

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having thought fit, in delivering your judgement, to pay such due attention to those very opinions which are the grounds of my argument, as to leave the general question, Whether Negroes in this country become free or not, without judicial determination; deciding only on this particular case, from circumstances of insufficiency arising out of the cause returned upon the writ of Habeas Corpus; and as something more of importance, within the province of your Lordship, still remains to be done, this pamphlet is suffered to approach you, though, like Hamlet's ghost, with all its imperfections on its head.

F I N I S.